



**UNITED STATES DEPARTMENT OF COMMERCE**  
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VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/477,984	06/07/95	COWGILL	C 1087.001

HM22/0113

AMY L COLLINS  
CHIRON CORPORATION  
INTELLECTUAL PROPERTY R440  
4560 HORTON STREET  
EMERYVILLE CA 94605

EXAMINER

GUPTA, A

ART UNIT	PAPER NUMBER
1653	28

DATE MAILED: 01/13/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



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Below is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

DATE MAILED:

**ADVISORY ACTION**

■ THE PERIOD FOR RESPONSE

- a) ■ is extended to run 3 Month or continues to run \_\_\_\_ from the date of the final rejection.
- b) ☐ expires three months from the date of the final rejection or as to the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response as set forth in b) above.

- Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- Applicant's response to the final rejection, filed 6-10-99, has been considered with the following effect, but is not deemed to place the case in condition for allowance.
1. ☐ The proposed amendments to the claim/and or specification will not be entered and the final rejection stands because:
- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - b. ☐ They raise new issues that would require further consideration and/or search. (See note).
  - c. ☐ They raise the issue of new matter (See note).
  - d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - e. ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

2. ☐ Newly proposed or amended claims \_\_\_\_ would be allowed if submitted in a separately filed amendment canceling the non-allowable claims.
3. ☐ Upon the filing of an appeal, the proposed amendment ☐ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: None

Claims objected to: None

Claims rejected: 1-12, 17-18, 47, 49-51, 58-58, 64

However;

☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

4. ■ The affidavit, exhibit or request for reconsideration has been considered, but does not overcome the rejection because To overcome the art rejection, Applicants have submitted a declaration under 37 CFR 1.131. However, The Declaration filed on 6-10-99 under 37 CFR 1.131 has been considered but is ineffective to overcome the Holloran et al. reference.  
The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Holloran et al. reference because the MPEP states that the declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to a particular date. Vague and general statement in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof of showing of facts" and thus do not satisfy the requirements of 37 CFR 1.131 (b). Applicants have not given a clear indication making reference to fact that in describing reduction to practice. For example, on page 2 of the declaration, it is stated "Page 3 exhibits shows that we contemplated the second cation exchange step to be optional if P. Pastoris was used". However this is only a contemplation, no factual evidence has been submitted that is contemplation was actually reduced to practice.  
The rejection is maintained.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

*Christopher S.F. Low*

*Supervisory Patent* CHRISTOPHER S. F. LOW  
PRIMARY EXAMINER  
GROUP 1800-1600